

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELIZABETH NELSON and ALBERT THROWER, Case No. 2:23-cv-11597

Plaintiffs,

Hon. Brandy R. McMillion
Mag. Judge Curtis Ivy, Jr.

-v-

ROBERT SCOTT (JOHN DOE PROPERTY
MAINTENANCE DIVISION SUPERVISOR),
SERVICE TOWING, INC., ABLE TOWING, LLC,
BRUCE HERTZ,
SECRETARY, SANDRA A. HERTZ, REGISTERED AGENT,
RANDY HERTZ, DENNIS HERTZ,
1 JOHN DOE CITY OF WARREN PROPERTY
MAINTENANCE DIVISION EMPLOYEES,
JAMES CUMMINS, BUILDING DEPARTMENT
DIRECTOR, CITY OF WARREN ZONING DEPT.
EMPLOYEES, CURTIS GAUSS #22, FRANK
BADALAMENTE, MARY MICHAELS,
BRIAN KIJEWski, MARILYN TREMBATH,
2 JOHN DOES, 4 JOHN DOE WARREN POLICE
DEPARTMENT POLICEMEN, CITY OF WARREN,
WARREN POLICE COMMISSIONER WILLIAM
DWYER, CAPTAIN WILLIAM REICHLING,
MAYOR JAMES FOUTS AND
KIMBERLY ELIZABETH BRANSON,

Defendants.

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SERVICE TOWING, INC. DEFENDANTS
MOTION FOR DISMISSAL UNDER RULE 12(b)(6)

NOW COME Defendants SERVICE TOWING, INC., ABLE TOWING, LLC, DENNIS HERTZ, BRUCE HERTZ, SANDRA HERTZ, RANDY SULLIVAN and EDWARD HERTZ (collectively herein the “Service Towing Defendants” unless identified otherwise), by and through undersigned counsel, pursuant to Fed.R.Civ.P. 12(b)(6), and in support of their Motion For Dismissal Under Rule 12(b)(6), hereby state as follows:

The Service Towing Defendants move this Court to dismiss Claims I and II of Plaintiffs 3rd Amended Complaint (ECF No. 55, PageID.600) with prejudice

under Fed. R. Civ. P. 12(b)(6) as Plaintiffs have failed to state claims upon which relief may be granted and for the other reasons set forth in the accompanying Brief In Support thereof. In further support thereof, the Service Towing Defendants incorporate by reference the attached Brief In Support.

WHEREFORE, for the foregoing reasons, as further established in their Brief In Support, the Service Towing, Inc. Defendants respectfully requests this Court: (a) grant their Motion For Dismissal of Plaintiffs' Third Amended Complaint—ECF No. 55; (b) dismiss with prejudice Claim Numbers 1 and 2 on the basis of the 4th, 5th and 14th Amendments pursuant to Fed. R. Civ.P. 12(b)(6); (c) dismiss Defendants Sandra Hertz, Edward Hertz, Bruce Hertz, Dennis Hertz and Randy Sullivan and Able Towing, LLC from this action with prejudice; (d) award the Service Towing Defendants their costs and expenses, including attorney fees, incurred in filing this Motion, and (e) grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ ThomasStidham
Thomas H. Stidham (P56504)
Jennifer Mead (P57106)
Co-Counsel for Service Towing, Inc.
Defendants

Dated: June 12, 2024

LR 7.1 STATEMENT OF CONFERRAL

In accordance with E.D. Mich. LR 7.1(a), there was a telephonic conference between counsel for the Service Towing, Inc. Defendants and Plaintiffs Elizabeth Nelson and Albert Thrower on June 12, 2024, in which counsel for the STI Defendants explained the nature of the motion and its legal basis and requested but did not obtain concurrence in the relief sought herein.

Respectfully submitted,

/s/ ThomasStidham
Thomas H. Stidham (P56504)
Jennifer Mead (P57106)
Co-Counsel for Service Towing, Inc.
Defendants

Dated: June 12, 2024

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**SERVICE TOWING, INC. DEFENDANTS
BRIEF IN SUPPORT OF MOTION FOR DISMISSAL
UNDER RULE 12(b)(6)**

NOW COME Defendants SERVICE TOWING, INC., ABLE TOWING, LLC, DENNIS HERTZ, BRUCE HERTZ, SANDRA HERTZ, RANDY SULLIVAN and EDWARD HERTZ (collectively herein the “Service Towing Defendants” unless identified otherwise), by and through undersigned counsel, pursuant to Fed.R.Civ.P. 12(b)(6), and in support of their Motion For Dismissal, hereby state as follows:

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STATEMENT OF ISSUES PRESENTED

I. Whether the Plaintiffs fail to state a claim where they fail to allege with any degree of specificity which of the named STI Defendants were personally involved or responsible for alleged violations of Plaintiffs Federal rights?

Defendants Answer: Yes.

Plaintiffs Answer: No.

II. Whether the Plaintiffs have stated valid claims for unspecified violations of the 5th Amendment?

Defendants Answer: No.

III. Whether Plaintiffs' Claims Numbers 1 and 2 fail to state claims that the STI Defendants violated Plaintiffs 4th Amendment rights in towing the vehicles?

Defendants Answer: Yes.

IV. Whether Plaintiffs fail to state valid claims for alleged violations of the 14th Amendment?

Defendants Answer: Yes.

V. Whether Plaintiffs state law allegations or claims are frivolous and fail to state claims upon which relief may be granted?

Defendants Answer: Yes.

VI. Whether the Service Towing Defendants are state actors for purposes of Plaintiffs' constitutional claims?

Plaintiffs Answer: No.

Defendants Answer: Yes.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Fed.R.Civ.P. 12(b)(6)

Ashcroft v Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009).

Bell Atlantic Corp v Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007).

Brite Financial Services, LLC v Bobby's Towing Service, LLC,
461 F.Supp.3d 549, 558 (E.D. Mich. 2020)

MCL 257.252a, MCL 257.252d and MCL 257.252f

Flagg v City of Detroit, 715 F.3d 165, 174 (6th Cir. 2013).

Lugar v Edmondson Oil Co, 457 US 922, 937, 102 SCt 2d 744, 73 LEd2d 482 (1983).

Mathews v Eldridge, 424 US 319, 333 (1976)

Moldowan v City of Warren, 578 F3d 351, 399 (6th Cir. 2009),

Olivia Robertson, et al v Breakthrough Towing, LLC, USD.C. E.D. Mich. Case No. 2:19-cv-10266-MAG-EAS; ECF No. 148, PageID.2831-2867 (Most Appropriate Authority re: state actor)

US v Morgan, 744 F2d 1215, 1218 (6th Cir. 1984).

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I. INTRODUCTION AND FACTUAL BACKGROUND

Given a third bite at the proverbial pleading apple, Plaintiffs' 3rd Amended Complaint repeats and suffers from the same deficiencies that led to the Magistrate Judge's well-reasoned Report And Recommendation On Defendant's Motion To Dismiss And For Summary Judgment (ECF No. 35), ECF No. 46, PageID.526. Once again, Plaintiffs nakedly allege that in towing two vehicles on July 7, 2021, the Defendants violated their 4th, 5th and 14th Amendment rights.

Factually, some matters have been modified in the 3rd Amended Complaint. It deletes the prior allegations within the 2nd Amended Complaint that on July 7, 2021, Branson called Defendant Scott, or Mayor Fouts, Does acting as an informant per agreement and told (Ds') Scott, Gauss, Cummins, Badalamente, Kijewski, Does that Thrower arrived at 7568 Hudson Ave. ECF No.29, PageID.83 at ¶22. Importantly, it also deletes the Plaintiffs explanation of how the Warren Police Department were contacted and "raided" the 7568 Hudson address:

"23) (D) Scott, Gauss, Cummins, Badalamente, Kijewski, Does contacted the Warren Police Van Dyke substation and raided (P) Thrower address 7568 Hudson Ave Mi and towed (P) Thrower 2011 Silverado with (D) Service Towing Inc., Able Towing LLC Hertz Brothers defendants in the morning." ECF No.29, PageID.83 at ¶23.

The 3rd Amended Complaint also deletes an important fact established in the 2nd Amended Complaint at ¶26: that on 7/7/21, Defendant Scott wrote a ticket

for 301.3 Unsafe Structure for Human Habitation relative to 7568 Hudson, which forms an important portion of the reason the authorities were at the property. ¶26. Perhaps even more puzzling, in the Third Amended Complaint, quotations attributed to Mr. Scott have even slightly changed! Nevertheless, Plaintiffs do not plead cognizable claims under 42 USC §1983 for alleged violations of the 4th, 5th and 14th Amendments arising from the towing of two vehicles and Plaintiffs do not even attempt to plead the elements or facts in support of their state law claims. Accordingly, all of their claims ought to be dismissed.

II. STANDARD OF REVIEW

A court considering a motion to dismiss under Fed. R. Civ.P. 12(b)(6) accepts all well-pled allegations as true, but need not accept as true any “legal conclusions or unwarranted factual inferences, and conclusory allegations or legal conclusions masquerading as factual allegations.” *Terry v Tyson Farms, Inc*, 604 F.3d 272, 276 (6th Cir. 2010). “[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Erickson v Pardus*, 551 U.S. 89, 94 (2007)(citing *Bell Atlantic Corp v Twombly*, 550 U.S. at 555). A court may also consider matters of public record without conversion to summary judgment. See *Amini v Oberlin Coll.*, 259 F3d 493, 502-503 (6th Cir. 2001). A court may take judicial notice of “other court proceedings” without

converting a motion to dismiss into a motion for summary judgment. *Buck v Thomas M. Cooley Law Sch.*, 597 F.3d 812, 816 (6th Cir. 2010).

To survive a motion to dismiss, the complaint must be plausible on its face and “raise the right to relief above the speculative level.” *Bell Atlantic Corp v Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007). The allegations must include sufficient factual content to allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009).

III. ARGUMENT

A. PLAINTIFFS’ 3RD AMENDED COMPLAINT (ECF NO. 55) FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED AS TO THE INDIVIDUAL SERVICE TOWING DEFENDANTS AND FAILS TO ALLEGE WITH ANY DEGREE OF SPECIFICITY WHICH OF THE NAMED DEFENDANTS WERE PERSONALLY INVOLVED OR RESPONSIBLE FOR ALLEGED VIOLATIONS OF PLAINTIFFS’ FEDERAL RIGHTS.

It is elementary that Plaintiffs are the “master[s] of [their] complaint.” *Roddy v Grand Trunk W. R.R., Inc.*, 395 F.3d 318, 322 (6th Cir. 2005). “Although a *pro se* complaint must be held to a less stringent standard than that prepared by an attorney, the courts have not been willing to abrogate the basic pleading essentials in *pro se* suits.” *Leisure v Hogan*, 21 F.App’x 277, 278 (6th Cir. 2001) (citing *Haines v Kerner*, 404 U.S. 519, 520 (1972)). In the Magistrate Judge’s

Report And Recommendation ECF No. 46, PageID.545, the Magistrate Judge dismissed count three (of the plaintiffs' 2nd Amended Complaint (ECF No. 29)) without prejudice and permitted Plaintiffs "to file an amended complaint in which they expressly allege personal involvement by the individuals named." ECF No. 46, PageID.545.

On May 29, 2024, Plaintiffs filed their 3rd Amended Complaint Per Court Order, ECF No. 55, Page ID.600, in which as to the individual Defendants, they simply ignore the Court's admonitions and repeat the very same folly as contained within their 2nd Amended Complaint.

With respect to the individual Service Towing Defendants, Bruce Hertz, Dennis Hertz, Sandra Hertz and Randy Sullivan, there are no specific allegations of which of these Defendants were personally involved in or responsible for the alleged violations of plaintiffs' rights. There is no specificity at all as Plaintiffs do not explain what specific acts did each commit? What did they do? Instead, as one example, in ¶14, plaintiffs state various general principles of law or quotations from various opinions concerning when one acts in concert or conspiracy with state actors which purports to define when a private party becomes a "willful participant" with the state to deprive others of constitutional rights. ECF No. 55, PageID.602. Plaintiffs then allege "(D) STI and Hertz Bros., Sandra Hertz, Randy

Sullivan fit this definition for liability of private parties acting in concert with (D) Scott.” *Id.* This is insufficient as a matter of law.

Yet ¶14 and the remainder of the amended complaint fails to state sufficient factual allegations as to the facts surrounding the towing of the two vehicles, who did what and specifically how were plaintiffs constitutional rights allegedly violated. “[M]ore than bare assertions of legal conclusions is ordinarily required to satisfy federal notice pleading requirements.” *Leisure v Hogan*, 21 F.App’x 277, 278 (6th Cir. 2001) (quoting *Wells*, 891 F.2d at 594). “A complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory.” *Id.* (citing *Scheid*, 859 F.2d at 437).

Moreover, as the Magistrate Judge noted in its Report And Recommendation, ECF No. 46, PageID.543, “[w]hen suing an individual actor... for constitutional violations under § 1983, a plaintiff must demonstrate that the actor ‘directly participated’ in the alleged misconduct, at least by encouraging, implicitly authorizing, approving or knowingly acquiescing in the misconduct, if not carrying it out himself.” *Flagg v City of Detroit*, 715 F.3d 165, 174 (6th Cir. 2013). “[I]t is particularly important in such circumstances that the complaint make clear exactly who is alleged to have done what to whom, to provide each individual with fair notice as to the basis of the claims against him or her, as distinguished from collective allegations against the state.” *Jack-Bey v Michigan*

Dep't of Corr., 2014 WL 1255910, at *5 (W.D. Mich. Mar. 26, 2014)(quoting *Robbins v Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008) (emphasis omitted)).

The STI Defendants submit that a fair reading of the 3rd Amended Complaint once again repeats their initial folly as it fails to allege with specificity how each STI Defendant violated the Constitution or another federal law. There is no personal involvement at all relative to Sandra Hertz or Edward Hertz, who plaintiffs simply attempt to “drop” as a defendant without an order of the Court.

According to the allegations, at best, Defendant Scott called STI, Dennis Hertz or Bruce Hertz or Sullivan, and plaintiff Thrower heard or saw STI, Dennis Hertz or Bruce Hertz, and/or employee (D) Sullivan towing his 2011 Silverado & Honda directed by Scott. ¶18, ECF 55, PageID.603. Plaintiff Thrower claims he heard either Dennis Hertz or Bruce Hertz or employee Sullivan say “I can’t tow Honda without damaging it because it’s at an angle.” ECF 55, PageID.603 at ¶22. Next, plaintiff Thrower alleges that on July 8, 2021, he went to the STI office to retrieve his Silverado and in ¶28, a “Hertz Brother or employee Sullivan stalled him per earlier agreement with (D) Scott-for approximately 30 minutes pretending like (D) could not find (PT) Silverado.” ECF 55, PageID.604 at ¶28. According to plaintiff Thrower, he was restrained by Scott “while (Ds’) Hertz Bros &/or Sullivan watched”. ECF 55, PageID.604 at ¶29.

The STI Defendants submit that as to Claim No. One, plaintiffs have failed to state a claim upon which relief may be granted as the amended complaint contains no facts in support of its conclusory allegations that Defendants violated his constitutional rights. What did Sandra Hertz, Bruce Hertz, Dennis Hertz, Edward Hertz and Randy Sullivan do to violate any right as alleged in Claim No. 1? Likewise, there are no specific and separate allegations against Defendant Able Towing, LLC in the towing of the vehicles. We do not know these answers as the amended complaint does not clarify exactly who is alleged to have done what to whom. Nor does it provide each Defendant with fair notice of the basis of the claims against it, him or her.

Likewise, as to Claim No. Two, plaintiffs have similarly failed to provide any specific facts about the so-called agreement or conspiracy between Mr. Scott and either Bruce Hertz or Dennis Hertz or Sandra Hertz or Randy Sullivan. Defendants submit it is not enough to simply announce that there was an agreement or conspiracy between Scott and the individual STI Defendants to detain or stall plaintiff Thrower. Yet even assuming *arguendo* the existence of such an agreement, there is no constitutional violation in “stalling” someone so that the police may ultimately arrive to arrest him on misdemeanor warrants. And merely watching or observing the situation unfold does not create liability where they did nothing more than play a passive role in the alleged violations.

Defendants further submit to the Court it is not enough simply to announce that the Defendants entered on to the 7568 Hudson property and towed 2 operable vehicles violating the 4th, 5th and 14th Amendments. Even assuming the truth of the above allegations, entering onto property at the direction of another and towing a vehicle does not constitute a constitutional violation nor does one merely making an alleged statement that a certain vehicle cannot be towed without damaging it because it is at an angle. For all of the foregoing reasons, Plaintiffs have failed to state claims upon which relief may be granted.

B. PLAINTIFFS DO NOT STATE VALID CLAIMS FOR UNSPECIFIED VIOLATIONS OF THE FIFTH AMENDMENT.

Plaintiffs' claims for a violation of the Fifth Amendment is meritless, fails to state a claim upon which relief may be granted and ought to be dismissed with prejudice. In their 3rd Amended Complaint, Plaintiffs merely announce alleged violations of the 5th Amendment but there are no facts alleged in support of an alleged violation. ECF No. 55, PageID.601; ECF No. 55, PageID.605. Even accepting the scant factual allegations as true, here, there was no taking without just compensation under the Fifth Amendment. In *Brite Financial Services, LLC v Bobby's Towing Service, LLC*, 461 F.Supp.3d 549, 558 (E.D. Mich. 2020), the district court noted that construction of the public use requirement does not extend the scope of the 5th Amendment to the towing and storage of vehicles pursuant to

Michigan's towing laws. The law is well established that Section 1983 is the exclusive remedy for alleged constitutional violations. *Thomas v Shipka*, 848 F2d 496, 499 (6th Cir. 1987), vacated on other grounds, 488 US 1036 (1989) (holding that Section 1983 is the exclusive remedy for alleged violations of a plaintiff's constitutional rights). Nor was the towing of the vehicles for "public use" and as such, there could be no Fifth Amendment violation. Lastly, the STI Defendants are not state actors and therefore, are not entities or individuals subject to an action under Section 1983. Thus, the foregoing reasons, Plaintiffs' claims for unspecified violations of the Fifth Amendment in towing plaintiffs' vehicles (Claim I) and apparently "stalling" Thrower on July 8, 2021 (Claim II) do not state claims for a violation of the Fifth Amendment upon which relief may be granted and the STI Defendants' Motion ought to be granted on this basis.

C. CLAIMS ONE AND TWO FAIL TO STATE CLAIMS THAT THE STI DEFENDANTS VIOLATED PLAINTIFFS' 4TH AMENDMENT RIGHTS IN TOWING VEHICLES.

In their 3rd Amended Complaint, Plaintiffs allege the STI Defendants, in tandem and in a conspiracy with Defendant Scott, violated their 4th Amendment rights when they entered on to the 7568 Hudson property without a search warrant, towing the two vehicles. ECF No. 55, PageID.605 (Claim No. One). Yet plaintiffs have clearly failed to state a claim upon which relief may be granted for several reasons. First, their legal conclusions masquerading as facts concerning curtilage

at pages 3-4 contradict other allegations, namely, those in which they admit that the “2008 Honda Civic was parked on concrete drive behind 7568 Hudson.” ECF No. 55, PageID.603 at ¶21. This is significant as when both a vehicle and a police officer were both on a driveway, “depending on the driveway’s particularities, has been viewed as outside the curtilage.” See *Habich v Wayne County, MI*, No. 22-1517, 6th Cir. April 12, 2023, citing *U.S. v Coleman*, 923 F.3d 450, 455-56 (6th Cir. 2019); *U.S. v Galaviz*, 645 F.3d 347, 356 (6th Cir. 2011).

Next, City of Warren court records and a citation No. Y028064, issued on 7/7/21, establish that contrary to plaintiffs contention, the vehicle(s) were parked on the grass. **Exhibit A—Court Records.** Third, the Order To Clean Up Property dated July 7, 2021 and issued in three separate cases, orders 7568 Hudson to be cleaned and cleared of all debris, inoperable vehicles and other items and expressly authorizes the City of Warren to enter the Property and conduct any work necessary to comply with the Order. *Id.* Notably, one of the Cases in which the Order To Clean Up Property dated July 7, 2021 also was entered was Y025638, wherein the City of Warren Administrative Hearings Bureau had previously entered its Default Decision And Order against Thrower on March 4, 2020. *Id.* That Decision/Order provides “that if respondent fails to correct the violation(s) within 30 days, the City may correct the violation and request enforcement costs.” *Id.* Once again, this Order furnishes the City with additional authority to correct

the violation and lawfully be upon or at 7568 Hudson to remedy the violations.

Additionally, on July 7, 2021, court records reflect there was an existing Complaint-Misdemeanor and an existing Warrant for the arrest of Thrower, although the complaint establishes that he was not arrested until July 8, 2021. **Ex.**

A. Clearly, plaintiffs simply ignore that each of the court Orders above establish that any officer at 7568 Hudson on July 7, 2021 is lawfully positioned in a place from which the two vehicles can be plainly viewed and each officer has a lawful right of access to the vehicles, constituting a plain view exception to the warrant requirement. See *U.S. v Bishop*, 338 F.3d 623, 626 (6th Cir. 2003).

Moreover, plaintiffs once again ignore that another source of authority for the towing of the vehicles by the City of Warren on July 7, 2021 is grounded in state law, specifically in MCL 257.252d(1). Subsection (1)(f) applies if removal is necessary in the interest of public safety because of fire, flood, etc. or in case of an emergency (such as the illegal use or occupation of 7568 Hudson such that one must clear the entire scene to prevent injury to persons or property). Likewise, subsection (1)(g) applies if the vehicle is hampering the use of private property by the owner or individual in charge or is parked in a manner that impedes the movement of another vehicle. Utilizing either source compels the conclusion that the towing of the vehicles by both the STI Defendants and the City of Warren Defendants were proper, lawful and cannot constitute a 4th Amendment violation.

Importantly, the Sixth Circuit has held that even a wrongful search or seizure by a private party does not violate the Fourth Amendment. *US v Morgan*, 744 F2d 1215, 1218 (6th Cir. 1984). Once again, plaintiffs scant factual allegations are not enough to raise a right to relief above the speculative level. *Bell Atlantic Corp v Twombly*, 550 U.S. at 555. As such, Claim Nos. 1 and 2 should be dismissed to the extent plaintiffs allege a violation of the 4th Amendment.

D. PLAINTIFFS FAIL TO STATE VALID CLAIMS FOR ALLEGED VIOLATIONS OF THE 14TH AMENDMENT.

Plaintiffs in conclusory fashion allege that the STI Defendants violated their 14th Amendment rights in Claim Nos. 1 and 2. Although “[t]he fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner[,]’ “ *Mathews v Eldridge*, 424 US 319, 333 (1976) (citation omitted), courts must look at the particular situation to determine what level of due process is required. See *Morrissey v Brewer*, 408 US 471, 481 (1972) (“due process is flexible and calls for such procedural protections as the particular situation demands.”).

Yet plaintiffs have failed to state a claim upon which relief may be granted and their 14th Amendment claims cannot be sustained. Courts addressing similar claims in this circuit have determined that as long as the State provides a process by which an owner may regain possession, the impoundment of a vehicle does not

violate due process. See *Brite Financial Services, LLC v Bobby's Towing Services, LLC*, 461 F.Supp.3d 549, 559 (E.D. Mich. 2020) (impounding a vehicle violates due process only if the State fails to provide a process by which the owner can regain possession). Yet Michigan's statutory towing scheme provides an established mechanism and legal process by which one may obtain their vehicles and challenge both the propriety of the towing and/or reasonableness of the towing and storage fees. MCL 257.252a, MCL 257.252d and MCL 257.252f (by filing petition in the state district court). Moreover, in their amended complaint, plaintiffs allege that each retrieved and/or redeemed each vehicle. ECF No. 55, PageID.605 at ¶¶ 35-36.

There are simply no facts to support an undefined violation of the 14th Amendment in Claim No. 2 by any STI Defendant other than a vague allegation that the Hertz brothers or Mr. Sullivan "watched" plaintiff Thrower be arrested. ECF No. 55, PageID.604 at ¶29. Clearly, there are no violations of the 14th Amendment by the STI Defendants and Plaintiffs have failed to state any claim upon which relief may be granted.

E. PLAINTIFFS' STATE LAW ALLEGATIONS/CLAIMS ARE FRIVOLOUS AND FAIL TO STATE CLAIMS UPON WHICH RELIEF MAY BE GRANTED.

In their 3rd Amended Complaint, Plaintiffs claim they are seeking damages for state law torts of assault and battery, kidnapping, trespassing, theft. ECF

No.55, PageID.600. In ¶1 they add “abuse of process” to the list. In ¶3, plaintiffs state they bring “state law claims pursuant to the Court’s supplemental jurisdiction of trespass, theft, assault and battery, kidnapping, false imprisonment, abuse of process.” ECF No.55,PageID.601. Claim Nos. 1 and 2 are devoid of any factual allegations to support these claims and only Claim No. 2 even references an “assault and battery” but not as a request for relief. In their prayer entitled “Relief”, although Plaintiffs request \$100 Million Dollars in compensatory and punitive damages, no specific relief is requested for state law claims. ECF No.55,PageID.605.

In Magistrate Judge Ivy’s Report And Recommendation On Defendant’s (Warren Defendants) Motion To Dismiss And For Summary Judgment (ECF No. 35), Mag. Judge Ivy recommends the Court decline supplemental jurisdiction over Plaintiffs state law claims. ECF No. 46, PageID.548. Thus, it is not clear from the amended complaint whether Plaintiffs are seeking relief upon the mentioned state law claims or since they did not request any specific relief thereon in Claim Nos. 1 and 2 or in the Relief section of the complaint, whether they have abandoned their state law claims.

Although Plaintiffs leave it to all of the Defendants and the Court to unravel their claims, it is undisputed that such pleading fails to state any state law claims and the Court should both decline to exercise supplemental jurisdiction and dismiss

the state law allegations/claims for trespass, theft, assault and battery, kidnapping, false imprisonment and abuse of process. Plaintiffs do not even attempt to plead the elements of these claims or furnish any factual allegations to establish any state law claim (and explain who did what to whom? How and when?). Accordingly, Plaintiffs have failed to state any claims upon which relief may be granted as to their so-called state law allegations/claims and these ought to be dismissed.

F. NONE OF THE SERVICE TOWING, INC. DEFENDANTS ARE “STATE ACTORS” AND CANNOT BE HELD LIABLE FOR ALLEGED, UNSUPPORTED CONSTITUTIONAL VIOLATIONS.

In Plaintiffs’ 3rd Amended Complaint—ECF No. 55, Plaintiffs allege a series of constitutional violations of the 4th Amendment, 5th Amendment and 14th Amendment against Defendants involving the towing of two vehicles on July 7, 2021. It is elementary that a private business does not act under color of state law, and thus is not a “state actor,” unless its conduct is “fairly attributable to the state.” *Lugar v Edmondson Oil Co*, 457 US 922, 937, 102 SCt 2d 744, 73 LEd2d 482 (1983). “A plaintiff may not proceed under Section 1983 against a private party ‘no matter how discriminatory or wrongful’ the party’s conduct. *See Tahfs v Proctor*, 316 F3d 584, 590 (6th Cir. 2003).

The District Court’s review of authority involving whether towing companies are state actors in this circuit in the case of *Olivia Robertson, et al v Breakthrough Towing, LLC*, USD.C. E.D. Mich. Case No. 2:19-cv-10266-MAG-

EAS; ECF No. 148, PageID.2831-2867, at PageID.2844-2845 is instructive, noting that “[t]he fact that towing occurs does not make every entity that has some connection to the tow a representative of the state. In fact, case law in this circuit indicates that towing companies are generally not state actors under the nexus and state compulsion theories—both at the summary judgment stage⁷ and on the face of the pleadings⁸—even when those companies tow vehicles pursuant to government contracts or at the express request of the police.” Indeed, the District Court cited *Carmen v City of Detroit*, 2018 WL 1326295, at *7-8 (finding that two private towing companies called by Detroit police officers to impound certain vehicles were not state actors liable under Section 1983, explaining that plaintiffs had failed to establish “pervasive entwinement” considering factors including (i) the companies were only “two of about twenty companies with a towing contract with Detroit,” and (ii) “the private towing companies did nothing more than fulfill their contractual obligations”) in footnote 7 of the opinion in support of the conclusion that towing companies are generally not considered state actors within the Sixth Circuit.

In *Moldowan v City of Warren*, 578 F3d 351, 399 (6th Cir. 2009), the Sixth Circuit stated that it recognized three tests for determining whether private conduct is fairly attributable to the state: the public function test, the state compulsion test, and the nexus test.

The public function test “requires that the private entity exercise powers which are traditionally exclusively reserved to the state...” The typical examples are running elections or eminent domain. The state compulsion test requires proof that the state significantly encouraged or somehow coerced the private party, either overtly or covertly, to take a particular action so that the choice is really that of the state. Finally, the nexus test requires a sufficiently close relationship (*i.e.* through state regulation or contract) between the state and the private actor so that the action may be attributed to the state.
Moldowan v City of Warren, Id. at 399.

The Sixth Circuit in *Nugent v Spectrum Juv. Just Servs*, 72 F4th 135, 139-140 (6th Cir. 2023) recognized that several tests have been employed to determine when a private entity may qualify as a state actor, including the entwinement test. This test requires Plaintiffs to show that the private entity is “entwined with governmental policies” or that the government is “entwined in [the private entity’s] management or control. *Brentwood Acad v Tenn Secondary School Athletic Ass’n*, 531 US 288, 294, 121 SCt 924, 148 LEd2d 807 (2001).

On these facts and employing any of the four tests, Plaintiffs cannot establish that any of the Service Towing Defendants conduct is fairly attributable to the state. Indeed, the public function test fails as the private entities are not exercising powers traditionally reserved to the state such as running an election or eminent domain. Moreover, the public function test has been narrowly interpreted and Plaintiffs bear the burden of establishing a historical showing, which cannot be done on these facts. Next, the state compulsion test also is inapplicable, as there is

no proof that the towing companies were coerced by the state to take any action. Likewise, the nexus test requirement of a sufficiently close relationship so that the towing companies conduct may be attributed to the state is not borne out by the proofs. “[M]ere cooperation simply does not rise to the level of merger required for a finding of state action.” *Lansing v City of Memphis*, 202 F3d 821, 831-832 (6th Cir. 2000). Therefore, Plaintiffs have failed to state a claim upon which relief may be granted for towing of the vehicles in violation of the 4th, 5th and 14th Amendments.

IV. CONCLUSION

For the foregoing reasons, the Service Towing, Inc. Defendants respectfully request the Court: (a) grant their Motion To Dismiss Plaintiffs’ Third Amended Complaint—ECF No. 55; (b) dismiss with prejudice Claim Numbers 1 and 2 on the basis of the 4th, 5th and 14th Amendments pursuant to Fed. R. Civ.P. 12(b)(6); (c) dismiss Defendants Sandra Hertz, Edward Hertz, Bruce Hertz, Dennis Hertz and Randy Sullivan and Able Towing, LLC from this action with prejudice; (d) award the Service Towing Defendants their costs and expenses, including attorney fees, incurred in filing this Motion, and (e) grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ ThomasStidham
Thomas H. Stidham (P56504)
Jennifer Mead (P57106)
Co-Counsel for Service Towing, Inc.
Defendants

Dated: June 12, 2024

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELIZABETH NELSON and ALBERT THROWER, Case No. 2:23-cv-11597

Plaintiffs,

Hon. Brandy R. McMillion
Mag. Judge Curtis Ivy, Jr.

-v-

ROBERT SCOTT, *et al.*,

Defendants.

EXHIBIT A
TO THE SERVICE TOWING, INC. DEFENDANTS
MOTION FOR DISMISSAL UNDER RULE 12(b)(6)

**INDEX OF EXHIBIT A: OTHER COURT RECORDS/PROCEEDINGS
AND MATTERS OF PUBLIC CONCERN RE: 7568 HUDSON AND
PLAINTIFF THROWER**

- 37th District Court Order To Clean Up Property re: 7568 Hudson dated 7/7/21;
- City of Warren Administrative Hearings Bureau Default Decision And Order dated 3/14/20 in Case No. Y025638W re: 7568 Hudson
- City of Warren Citation Y028064 dated 7/7/21;
- City of Warren Citation Y028065 dated 7/7/21;
- City of Warren Citation Y028242 dated 7/7/21;
- 37th District Court Case No. Y028065/Y028048 Complaint-Misdemeanor;
- 37th District Court Case No. Y028065/Y028048 Warrant-Misdemeanor dated July 7, 2021.

STATE OF MICHIGAN
IN THE 37TH JUDICIAL DISTRICT COURT

CITY OF WARREN,

Plaintiff,

v.

Case No. 4025638
Hon. John M. Chmura

Albert Dudley Thrower

(Defendant's Name)

7568 Hudson

(Address)

Warren, MI 48089

(City, State, Zip)

313-319-7370

(Telephone Number)

Defendant.

Albert Dudley Thrower /

ORDER TO CLEAN UP PROPERTY

7568 Hudson, WARREN, MICHIGAN
(Insert Address)

At a session of said court held in the
City of Warren, County of Macomb and State of Michigan
on 07/07, 2021.

Present: Hon. John M. Chmura
District Court Judge

This matter having been heard on 07/07/2021, for violation of the
(Court Date)
City of Warren Section(s) (1)308.1, Junk on property, (2) 302.5, Rodent Harborage
(Insert section numbers and identify the code—zoning, property maintenance, etc.)
(3) 308.2, Disposal of rubbish

Ordinances, and Defendant having appeared before this Court, and been found
responsible for the violation(s), this Court orders that the property be cleaned as more
particularly set forth in this Order, and Court being otherwise duly advised in the
premises;

IT IS ORDERED, that within Today () days of this Order, Defendant shall
(number of days)
comply with the conditions set forth in this Order. The property is described as:
7568 Hudson 12-13-33-278-030

(Address, Legal Description, Parcel Identification Number)

EX M P 1

The entire Property is to be cleaned and cleared of All debris including,
outdoor furniture, wood, metal, plastic, cardboard, overflowing garbage, bags of
garbage, inoperable vehicles, rodent harborage.

any and all junk and debris scattered on or about the front, rear, and side yards of the Property, and any overgrown or dead vegetation, from the Property and/or the fences.


IT IS FURTHER ORDERED, that in the event the Defendant fails to comply with the above requirements, the City of Warren may enter the Property and conduct any work necessary to comply with this Order.

IT IS FURTHER ORDERED, that the City may assess and collect all costs of such work necessary to comply with this Order, and may assess and collect all costs of such work and removal from the Defendant or otherwise lien the Property through any lawful remedy.

IT IS FURTHER ORDERED, that Defendant pay fines and costs in the amount of \$ TDB.

IT IS FURTHER ORDERED, that Defendant may be held in contempt of Court for the failure to comply with this Order, and may be ordered to appear before this Court and show cause why he should not be held in contempt of this Court and subject to penalty of this Court.

This Court shall retain jurisdiction to enforce the provisions of this order.



District Court Judge
JOHN M. CHMURA

EX **A** P 2

Original - Bureau
1st Copy - Petitioner
2nd Copy - Respondent

ADMINISTRATIVE HEARINGS BUREAU	DEFAULT DECISION AND ORDER	TICKET NO., AND PROPERTY ADDRESS Y025638 W 7568 HUDSON
-----------------------------------	-------------------------------	---

8300 Common Road, Warren, Michigan 48093

(586) 574-4700

Inspector, address, and telephone number <u>FRANK BODALAMENTI</u> CITY OF WARREN ONE CITY SQUARE WARREN, MICHIGAN 48093 Telephone <u>(586) 574-4703</u>
--

Respondent's name and address ALBERT THROWER 7568 HUDSON WARREN, MI 48089
--

IT IS HELD that:

1. The Administrative Hearings Officer (AHO) finds that respondent is responsible by default of all blight violation counts.
2. Respondent had notice of the hearing date and time, and failed to appear on that date and time.
3. I FRANK BODALAMENTI provided respondent notice of this violation by posting a copy of the ticket in a prominent place at the address where the violation occurred or sent a copy of the ticket by first-class mail to respondent's last known address or personally served respondent with a copy of the ticket. This paragraph is made on my personal knowledge. If sworn as a witness, I can testify competently to the facts in this paragraph.

3/4/20
Date

Fr. Bod.
Inspector

IT IS ORDERED that respondent:

1. ☒ Pay fines and costs in the amount of:

Count I \$1000 Count II Count III TOTAL \$1000
(Indicate 1st violation, 2nd violation; or 3rd or more violation for each count)

2. ☐ Reimburse the City of Warren for enforcement costs in the amount of (see enforcement cost form).
3. ☐ Fines are waived because the violator is an owner-occupier of the dwelling, is a first-time offender, and has corrected the violation.
4. ☐ Other

IT IS ALSO ORDERED that if respondent fails to correct the violation(s) within 30 days, the City may correct the violation and request enforcement costs.

3/4/20
Date

Ch.
Administrative Hearings Bureau Officer

Send payment to or pay in person at the 37th District Court. Make checks payable to the 37th District Court.

Respondent may file a motion to set aside this default decision and order within 21 days of the date of this order. Motion to Set Aside forms are available at the Violation's Bureau in the 37th District Court.

Respondent may appeal an adverse decision of the Administrative Hearings Bureau to the Macomb County Circuit Court within 28 days of the date of this order.

CITY OF WARREN CITATION				Ticket No. Y 028064					
THE UNDERSIGNED SAYS THAT ON:		Month 07	Day 07	Year 21	At Approx: AM <input checked="" type="checkbox"/> PM <input type="checkbox"/>	DOB	Month 07	Day 07	Year 07
State		Driver License / State Identification Number			Employer				
Race	Sex	Height	Weight	Hair	Eyes	Occupation			
Vehicle Plate Number				State	Vehicle Description (Year Make Color)				
Name (Company or Individual) ALBERT THORNER									
Street 7568 Hudson									
City WARREN		State MI		Zip Code 48089					
In violation of local ordinance(s) within the City of Warren Michigan									
At or near		7568 Hudson (address/location of the violation)							
The person named above did the following:									
Type	Ordinance No.	Code No.	Description	Charge No.	Repeat offender status				
Blight <input checked="" type="checkbox"/>	302.4	9839	TALL GRASS WEEDS	1	1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/>				
Blight <input checked="" type="checkbox"/>	308.1	9839	JUNK ON PROPERTY	2	1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/>				
Blight <input type="checkbox"/>	4.06	9839	PARKING ON GRASS	3	1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>				
<input checked="" type="checkbox"/> personally observed the blight violation. <input type="checkbox"/> After investigation, I have reasonable cause to believe that the person named above is responsible for the blight violation. If the second box is checked, City Attorney's Office approval is required.									
City Attorney or Assistant City Attorney (Signature)				Month	Day	Year			
Remarks:									
I served a copy of the citation on the person named above by: <input type="checkbox"/> Personal Service <input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Posting on property 7568 Hudson (address/location)									
SEE THE BACK OF THIS TICKET FOR FURTHER INSTRUCTIONS.									
I declare under penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.									
Authorized local officer and badge number (Printed) 32				Agent DPMI	Month 7	Day 7	Year 21		
Authorized local officer (Signature)				<input type="checkbox"/> Police Department <input checked="" type="checkbox"/> Property Maintenance <input type="checkbox"/> Rental Division		<input type="checkbox"/> Zoning <input type="checkbox"/> Other			

COURT COPY

TICKET #Y028064

07/08/2021 09:07

bkijewski

CITY OF WARREN CITATION

Ticket No. Y 028065

THE UNDERSIGNED SAYS THAT ON:	Month 07	Day 07	Year 21	At Approx: 11:54 AM <input checked="" type="checkbox"/> PM <input type="checkbox"/>	DOB	Month	Day	Year
State	Driver License / State Identification Number				Employer			
Race	Sex	Height	Weight	Hair	Eyes	Occupation		
Vehicle Plate Number				State	Vehicle Description (Year, Make, Color)			

Name (Company or Individual)

ALBERT Titmuck

Street

7568 Hudson

City

WARREN

State

MI

Zip Code

48089

In violation of local ordinance(s), within the City of Warren Michigan

At or near

7568 Hudson

(address/location of the violation)

The person named above did the following:

Type	Ordinance No.	Code No.	Description	Charge No.	Repeat offender status
Blight <input type="checkbox"/>	301.3		UNSAFE STRUCTURE FOR HUMAN HABITATION	1	1 st <input type="checkbox"/> 2 nd <input type="checkbox"/> 3 rd <input type="checkbox"/>
Blight <input type="checkbox"/>	22.11a		OCCUPYING W/O CITY CERTS	2	1 st <input type="checkbox"/> 2 nd <input type="checkbox"/> 3 rd <input type="checkbox"/>
Blight <input type="checkbox"/>	28.20b		FAIL TO OBTAIN CITY CERTS	3	1 st <input type="checkbox"/> 2 nd <input type="checkbox"/> 3 rd <input type="checkbox"/>

☐ I personally observed the blight violation.☒ After investigation, I have reasonable cause to believe that the person named above is responsible for the blight violation.

If the second box is checked, City Attorney's Office approval is required.

City Attorney or Assistant City Attorney (Signature)	Month	Day	Year
--	-------	-----	------

Remarks:

I served a copy of the citation on the person named above by:

☒ Personal Service☐ First Class Mail☒ Posting on property

7568 Hudson

(address/location)

SEE THE BACK OF THIS TICKET FOR FURTHER INSTRUCTIONS.

I declare under penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.

Authorized local official and badge number (Printed)	Agency	Month	Day	Year
32	DPM	07	07	21
Authorized local official (Signature)	<input type="checkbox"/> Police Department <input checked="" type="checkbox"/> Property Maintenance <input type="checkbox"/> Rental Division <input type="checkbox"/> Zoning <input type="checkbox"/> Other			

COURT COPY

TICKET #Y028065

07/08/2021 09:09

bkijewski

CITY OF WARREN CITATION

THE UNDERSIGNED SAYS THAT ON: Month 7 Day 7 Year 21 At Approx. 12:00 PM DOB Month 7 Day 8 Year 21

State OH Driver License / State Identification Number PD104875 Employer _____

Race _____ Sex _____ Height _____ Weight _____ Hair _____ Eyes _____ Occupation _____

Vehicle Plate Number _____ State _____ Vehicle Description (Year, Make, Color) _____

Name (Company or Individual) Albert Thrower (St. Anthony the Great Roman)

Street 7568 Hudson

City Warren State MI Zip Code 48059

In violation of local ordinance(s) within the City of Warren Michigan, _____

At or near 7568 Hudson (address/location of the violation)

The person named above did the following:

Type	Ordinance No.	Code No.	Description	Charge No.	Repeat offender status
Blight <input checked="" type="checkbox"/>	22-11(A)	9934	Occupying without City Certification	1	1 st <input type="checkbox"/> 2 nd <input type="checkbox"/> 3 rd <input checked="" type="checkbox"/>
Blight <input checked="" type="checkbox"/>	22-11(E)	9931	Failure to obtain City Certification	2	1 st <input checked="" type="checkbox"/> 2 nd <input type="checkbox"/> 3 rd <input type="checkbox"/>
Blight <input checked="" type="checkbox"/>	28.210 (109.1)	9937	Unsafe premises	3	1 st <input checked="" type="checkbox"/> 2 nd <input type="checkbox"/> 3 rd <input type="checkbox"/>

☒ I personally observed the blight violation.
☐ After investigation, I have reasonable cause to believe that the person named above is responsible for the blight violation.
 If the second box is checked, City Attorney's Office approval is required.

City Attorney or Assistant City Attorney (Signature) _____ Month _____ Day _____ Year _____

Remarks _____

I served a copy of the citation on the person named above by:
☐ Personal Service
☐ First Class Mail
☒ Posting on property 7568 Hudson (address/location)

SEE THE BACK OF THIS TICKET FOR FURTHER INSTRUCTIONS.
 I declare under penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.

Authorized local official and badge number (Printed) Steven H. Watriss 48 Agency Zoning Month 7 Day 8 Year 21

Authorized local official (Signature) [Signature]
☐ Police Department ☒ Zoning
☐ Property Maintenance ☐ Other
☐ Rental Division

COURT COPY

Y 028242

Original complaint - Court Warrant - Court		2nd Complaint copy - Prosecutor 3rd Complaint copy - Defendant	
STATE OF MICHIGAN 37TH JUDICIAL DISTRICT		COMPLAINT MISDEMEANOR	
		CASE NO. Y028065 / Y028048	
ORI MI- 500025J	Court address 8300 COMMON ROAD WARREN MI 48093		Court telephone no. 586-574-4900
THE PEOPLE OF <input type="checkbox"/> The State of Michigan v. ALBERT THROWER <input checked="" type="checkbox"/> CITY OF WARREN		Defendant's name and address CLEVELAND OH 44102-1828 Victim or complainant CITY OF WARREN Complaining witness JAMES CUMMINS	
Co-defendant(s)		Date: On or about 7-7-21	
City/Twp./Village WARREN	County in Michigan MACOMB	Defendant TCN	Defendant CTN
Police agency report no. Y028065 / Y028048	Charge CT I - FAILURE TO OBTAIN CITY CERTIFICATION	Defendant SID W/M	Defendant DOB [REDACTED]
Witnesses ZONING CODE 22.11A CT II - ILLEGAL OCUPATION OF POSTED VACANT HOME - ZONING CODE 22.11B CT III- UNLAWFUL OCCUPATION OF UNSAFE STRUCTURE 28-2(109)		<input type="checkbox"/> Oper./Chauf. <input type="checkbox"/> CDL	Vehicle Type Defendant DLN _____
Maximum penalty			
STATE OF MICHIGAN, COUNTY OF <u>MACOMB</u>			

The complaining witness says that on the date and at the location described, the defendant, contrary to law,

CTI

Committed at least two violations of failure to obtain city certification for residential rental property at 7568 Hudson, City of Warren, Michigan, pursuant to section 22.11a of the Code of Zoning Ordinances of the City of Warren, Michigan

CTII

At least two violations of illegal occupation of residential home posted for no occupancy: at 7568 Hudson, Warren, Michigan pursuant to section 22.11(e) of the Code of Ordinances of the City of Warren, Michigan

CT III

Unlawfully allowing occupancy of a unsafe residential structure posted for no occupancy: at 7568 Hudson, Warren, Michigan in violation of section 28-2(109) of the Code of Ordinances of the City of Warren

CT IV

Failure to comply with obey the administrative hearings officers' orders to pay fine or cost imposed under 2.5-7(a)(2) pursuant section 2.5.8 of the Code of Ordinances of the City of Warren, State of Michigan.

The complaining witness asks that defendant be apprehended and dealt with according to law.

(Peace Officers only) I declare that the statements above are true to the best of my information, knowledge, and belief.

Warrant authorized on <u>7/7/21</u> by: _____ Date Prosecuting official <u>[Signature]</u>	Complaining witness signature Subscribed and sworn to before me on <u>July 7 2021</u> Judge/Clerk/Judge/Magistrate <u>[Signature]</u>
--	---

Approved, SCAO		Original complaint - Court Warrant - Court		2nd Complaint copy - Prosecutor 3rd Complaint copy - Defendant	
STATE OF MICHIGAN 37TH JUDICIAL DISTRICT		WARRANT MISDEMEANOR		CASE NO. Y028065 / Y028048	
ORI MI- 500025J		Court address 8300 COMMON ROAD WARREN MI 48093		Court telephone no. 586-574-4900	
THE PEOPLE OF <input type="checkbox"/> The State of Michigan <input checked="" type="checkbox"/> CITY OF WARREN		Defendant's name and address ALBERT THROWER CLEVELAND OH 44102-1828		Victim or complainant CITY OF WARREN Complaining witness JAMES CUMMINS	
Co-defendant(s)		Date: On or about 7-7-21			
City/Twp./Village WARREN	County in Michigan MACOMB	Defendant TCN	Defendant CTN	Defendant SID W/M	Defendant DOB
Police agency report no. Y028065 / Y028048	Charge CT I - FAILURE TO OBTAIN CITY CERTIFICATION		Maximum penalty		
Witnesses		<input type="checkbox"/> Oper./Chauf. <input type="checkbox"/> CDL	Vehicle Type	Defendant DLN	

ZONING CODE 22.11A
 CT II - ILLEGAL OCUPATION OF POSTED
 VACANT HOME - ZONING CODE 22.11E
 CT III- UNLAWFUL OCCUPATION OF UNSAFE
 STRUCTURE 28-2(109)

STATE OF MICHIGAN, COUNTY OF MACOMB

To any peace officer or court officer authorized to make an arrest: The complaining witness has filed a sworn complaint in this court stating that on the date and the location described, the defendant, contrary to law,

CTI

Committed at least two violations of failure to obtain city certification for residential rental property at 7568 Hudson, City of Warren, Michigan, pursuant to section 22.11a of the Code of Zoning Ordinances of the City of Warren, Michigan

CTII

At least two violations of illegal occupation of residential home posted for no occupancy; at 7568 Hudson, Warren, Michigan pursuant to section 22.11(e) of the Code of Ordinances of the City of Warren, Michigan

CT III

Unlawfully allowing occupancy of a unsafe residential structure posted for no occupancy; at 7568 Hudson, Warren, Michigan in violation of section 28-2(109) of the Code of Ordinances of the City of Warren

CT IV

Failure to comply with obey the administrative hearings officers' orders to pay fine or cost imposed under 2.5-7(a)(2) pursuant section 2.5.8 of the Code of Ordinances of the City of Warren, State of Michigan.

Upon examination of the complaint, I find probable cause to believe defendant committed the offense set forth.

THEREFORE, IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN, I order you to arrest and bring defendant before the court immediately, or the defendant may be released when a cash bond is posted in the amount of \$ _____ for personal appearance before the court.

JUL 10 7 2024

(SEAL)

Date

Judge/Magistrate

Bar no.

By virtue of this warrant the defendant has been taken into custody as ordered.

Date

Peace officer